

Plaintiffs' Exhibit 67

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UNITED STATES,) 1:23-cv-00108-LMB-JFA
et al.,)
)
Plaintiffs,)
)
vs.)
)
GOOGLE LLC,)
)
Defendants.)

VIDEOTAPED 30(b)(6) DEPOSITION OF
CENTERS FOR MEDICARE & MEDICAID SERVICES
through the testimony of
CHRISTOPHER KOEPKE
August 25, 2023
9:00 a.m.

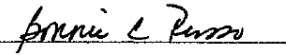
Reported by: Bonnie L. Russo
Job No. CS6075382

<p style="text-align: right;">Page 62</p> <p>1 reflected here, that in the course of its</p> <p>2 advertising work in the 2019 to '23 time period</p> <p>3 that CMS has found that a media mix approach</p> <p>4 that includes television, radio, and digital</p> <p>5 media is the most efficient and effective way</p> <p>6 to reach a target audience?</p> <p>7 MR. SOSNOWSKY: Objection to form.</p> <p>8 THE WITNESS: In the context of this</p> <p>9 document that is making preplanning arguments,</p> <p>10 that is correct.</p> <p>11 BY MS. GOODMAN:</p> <p>12 Q. Okay. Is it accurate -- setting</p> <p>13 aside the context of the document, has CMS in</p> <p>14 the course of its advertising work over the</p> <p>15 2019 to '23 time period found that a media mix</p> <p>16 approach that includes television, radio, and</p> <p>17 digital media to be the most efficient and</p> <p>18 effective way to reach the target audience?</p> <p>19 MR. SOSNOWSKY: Objection. Form.</p> <p>20 THE WITNESS: It's such a broad</p> <p>21 statement. I believe it depends on the target</p> <p>22 audience and on the project itself.</p>	<p style="text-align: right;">Page 64</p> <p>1 advertising, digital search volume, and</p> <p>2 innovative digital tactics, and the size of the</p> <p>3 media buy for the success of the campaign,</p> <p>4 correct?</p> <p>5 MR. SOSNOWSKY: Objection. Form.</p> <p>6 THE WITNESS: When you said among,</p> <p>7 that suggests that the correlative relationship</p> <p>8 is among all of those, and I don't think that's</p> <p>9 the purpose of the statement.</p> <p>10 A correlation can be done among</p> <p>11 multiple variables or between a couple, and the</p> <p>12 purpose here is to say that each one of these,</p> <p>13 when planned out appropriately -- and so they</p> <p>14 need to be put into a plan to decide what we're</p> <p>15 going to do -- have correlations with reach,</p> <p>16 how many people we can reach, and success,</p> <p>17 which is the impact, the ROI.</p> <p>18 And that's just slightly different.</p> <p>19 The word among -- I'm sorry. It just --</p> <p>20 because I wasn't sure where you were going to</p> <p>21 go, so I just had to clarify that point. I'm a</p> <p>22 statistical nerd.</p>
<p style="text-align: right;">Page 63</p> <p>1 BY MS. GOODMAN:</p> <p>2 Q. How about for this particular</p> <p>3 project, health insurance exchange public</p> <p>4 education and outreach?</p> <p>5 A. I think the key here is the word</p> <p>6 "mix." Those channels have been demonstrated</p> <p>7 to each one have an impact, independent of each</p> <p>8 other --</p> <p>9 Q. Well, it's accurate --</p> <p>10 A. -- or with each other.</p> <p>11 Q. It's accurate, sir, that CMS has</p> <p>12 found the analytics to demonstrate a</p> <p>13 correlation between the level of broadcast</p> <p>14 advertising, digital search volume, innovative</p> <p>15 digital tactics, and the size of the media buy,</p> <p>16 correct?</p> <p>17 MR. SOSNOWSKY: Objection. Form.</p> <p>18 THE WITNESS: Impacts the reach and</p> <p>19 success of the campaign. That is correct.</p> <p>20 BY MS. GOODMAN:</p> <p>21 Q. So there's a -- there's a</p> <p>22 correlative relationship among broadcast</p>	<p style="text-align: right;">Page 65</p> <p>1 BY MS. GOODMAN:</p> <p>2 Q. So the level of broadcast</p> <p>3 advertising relative to the level of digital</p> <p>4 search volume have an impact on the reach and</p> <p>5 success of the campaign; is that accurate?</p> <p>6 MR. SOSNOWSKY: Objection. Form.</p> <p>7 THE WITNESS: The relative</p> <p>8 broadcasting as it's related to the digital</p> <p>9 search volume has an impact on the campaign?</p> <p>10 BY MS. GOODMAN:</p> <p>11 Q. Okay. How about the --</p> <p>12 A. I'm sorry. I meant that as a</p> <p>13 question to make sure I understood your</p> <p>14 question.</p> <p>15 Q. Yes, that's my question.</p> <p>16 A. All right. In this case we have</p> <p>17 some evidence that top of funnel, including</p> <p>18 broadcasting, can increase digital search</p> <p>19 volume.</p> <p>20 Q. Okay. And so they have a</p> <p>21 correlative relationship relative to the</p> <p>22 success of the campaign?</p>

<p style="text-align: right;">Page 66</p> <p>1 MR. SOSNOWSKY: Objection to form.</p> <p>2 THE WITNESS: I would agree with</p> <p>3 that statement.</p> <p>4 BY MS. GOODMAN:</p> <p>5 Q. Okay. And does -- and CMS would</p> <p>6 agree with that statement?</p> <p>7 A. Yes. I very much represent CMS on</p> <p>8 that statement.</p> <p>9 Q. Sometimes CMS signs authorizations</p> <p>10 to buy, correct?</p> <p>11 MR. SOSNOWSKY: Objection. Form.</p> <p>12 THE WITNESS: Correct.</p> <p>13 BY MS. GOODMAN:</p> <p>14 Q. What is the purpose of an</p> <p>15 authorization to buy?</p> <p>16 A. The purpose of an organization to</p> <p>17 buy, it is communication between the COR, who</p> <p>18 is providing technical direction, and the</p> <p>19 contractor as to what media we are buying --</p> <p>20 Q. Okay.</p> <p>21 A. -- and with dollar amounts to begin</p> <p>22 a campaign.</p>	<p style="text-align: right;">Page 68</p> <p>1 e-mail.</p> <p>2 (Deposition Exhibit 78 was marked</p> <p>3 for identification.)</p> <p>4 MS. GOODMAN: So I am handing you</p> <p>5 Exhibit 78, CMS-ADS-380931 through 380932.</p> <p>6 BY MS. GOODMAN:</p> <p>7 Q. This Exhibit 78 is an example of an</p> <p>8 ad agency contractor requesting an</p> <p>9 authorization to buy, correct?</p> <p>10 A. I'm sorry. I am just taking a</p> <p>11 minute here to read through it.</p> <p>12 It has a slightly different look</p> <p>13 than most ATBs, so that's why it's just taking</p> <p>14 me a minute.</p> <p>15 Q. Okay. My question is simply: As</p> <p>16 reflected in the first e-mail from Erin Blazar</p> <p>17 at Weber Shandwick, is this an example of a</p> <p>18 contractor asking for an authorization to buy?</p> <p>19 MR. SOSNOWSKY: Objection. Form.</p> <p>20 THE WITNESS: I would actually say</p> <p>21 no.</p> <p>22 BY MS. GOODMAN:</p>
<p style="text-align: right;">Page 67</p> <p>1 Q. Authorizations to buy are not</p> <p>2 required by CMS, correct?</p> <p>3 MR. SOSNOWSKY: Objection. Form.</p> <p>4 THE WITNESS: CMS requires that</p> <p>5 there is an understanding of our direction for</p> <p>6 how to purchase media, and an authorization to</p> <p>7 buy is one mechanism for that understanding.</p> <p>8 BY MS. GOODMAN:</p> <p>9 Q. Okay. But it's the contracting</p> <p>10 agencies, advertising agencies, who sometimes</p> <p>11 request an authorization to buy, correct?</p> <p>12 MR. SOSNOWSKY: Objection to form.</p> <p>13 THE WITNESS: There are agencies who</p> <p>14 prefer to take direction from us through an</p> <p>15 authorization to buy.</p> <p>16 BY MS. GOODMAN:</p> <p>17 Q. And some who do not; is that</p> <p>18 accurate?</p> <p>19 A. That is true --</p> <p>20 MR. SOSNOWSKY: Objection.</p> <p>21 Foundation.</p> <p>22 THE WITNESS: -- they would use an</p>	<p style="text-align: right;">Page 69</p> <p>1 Q. Okay. And it says: "Similar to the</p> <p>2 initiative AOR letter, we are requesting one</p> <p>3 for Resolute, approved subcontractor on the SEP</p> <p>4 and OE9, and the Weber Shandwick company."</p> <p>5 That's still your testimony?</p> <p>6 MR. SOSNOWSKY: Objection. Form.</p> <p>7 THE WITNESS: Because this is an</p> <p>8 AOR, not an ATB.</p> <p>9 BY MS. GOODMAN:</p> <p>10 Q. Okay.</p> <p>11 A. Our authorizations to buy are</p> <p>12 generally -- will follow this and will have</p> <p>13 very clear direction as to what is being</p> <p>14 purchased.</p> <p>15 Q. Okay. And the person who signed</p> <p>16 this AOR is Seth Edlavitch, yes?</p> <p>17 MR. SOSNOWSKY: Objection. Form.</p> <p>18 THE WITNESS: The signature I see on</p> <p>19 the piece of paper that you gave me is Seth's.</p> <p>20 BY MS. GOODMAN:</p> <p>21 Q. And Seth is a contracting officer</p> <p>22 representative?</p>

<p style="text-align: right;">Page 70</p> <p>1 MR. SOSNOWSKY: Objection to form.</p> <p>2 THE WITNESS: Seth is a COR.</p> <p>3 BY MS. GOODMAN:</p> <p>4 Q. And nothing in this letter, AOR</p> <p>5 letter, indicates how much media to buy,</p> <p>6 correct?</p> <p>7 A. That is correct. This is not an</p> <p>8 ATB, which would have been signed after this.</p> <p>9 Q. Okay. And it doesn't say the</p> <p>10 quantity -- the price to pay for any media,</p> <p>11 correct?</p> <p>12 A. That will come later.</p> <p>13 MS. GOODMAN: Okay. Exhibit 79,</p> <p>14 CMS-ADS-1139301 through 1139 -- strike that.</p> <p>15 Exhibit 79, CMS-ADS-1139301 through</p> <p>16 02.</p> <p>17 (Deposition Exhibit 79 was marked</p> <p>18 for identification.)</p> <p>19 THE WITNESS: The print is getting</p> <p>20 smaller.</p> <p>21 BY MS. GOODMAN:</p> <p>22 Q. This is an example of an</p>	<p style="text-align: right;">Page 72</p> <p>1 report.</p> <p>2 Q. This authorization to buy does not</p> <p>3 state any particular vendor of advertising to</p> <p>4 use, correct?</p> <p>5 A. Specific vendors are listed in the</p> <p>6 actual plan, not always the ATB.</p> <p>7 Q. This one does not list any vendor,</p> <p>8 correct?</p> <p>9 A. This one does not list vendors.</p> <p>10 They will be in the specific plan that we would</p> <p>11 work to.</p> <p>12 Q. Okay. And Seth Edlavitch signed</p> <p>13 this authorization to buy, correct?</p> <p>14 A. Seth's signature is on this</p> <p>15 document.</p> <p>16 Q. And he's a -- he's a COR?</p> <p>17 A. He is a COR.</p> <p>18 Q. Not a CO?</p> <p>19 A. He is not a CO.</p> <p>20 MS. GOODMAN: Okay. Let's take a</p> <p>21 break.</p> <p>22 THE VIDEOGRAPHER: The time is</p>
<p style="text-align: right;">Page 71</p> <p>1 authorization to buy, correct?</p> <p>2 A. Yes, it is.</p> <p>3 Q. And this authorization to buy does</p> <p>4 not indicate the quantity of advertising to buy</p> <p>5 correct, like the number of ads?</p> <p>6 MR. SOSNOWSKY: Objection. Form.</p> <p>7 THE WITNESS: On the second page, it</p> <p>8 indicates the amount of reach that we expect to</p> <p>9 get from what is being purchased.</p> <p>10 BY MS. GOODMAN:</p> <p>11 Q. But it's an expectation, not an</p> <p>12 actual, correct?</p> <p>13 MR. SOSNOWSKY: Objection. Form.</p> <p>14 THE WITNESS: We will be assessing</p> <p>15 actuals through the course of the campaign and</p> <p>16 make shifts appropriate at that point --</p> <p>17 BY MS. GOODMAN:</p> <p>18 Q. Okay.</p> <p>19 A. -- so this is a very strong</p> <p>20 guideline as to what is expected --</p> <p>21 Q. Okay. And --</p> <p>22 A. -- actuals will come in the final</p>	<p style="text-align: right;">Page 73</p> <p>1 10:24. We are off the record.</p> <p>2 (A short recess was taken.)</p> <p>3 THE VIDEOGRAPHER: The time is</p> <p>4 a.m. This begins Media Unit No. 3. We are on</p> <p>5 the record.</p> <p>6 MS. MILLIGAN: I will note that</p> <p>7 Martha Goodman is no longer asking questions,</p> <p>8 and as stated at the beginning of this</p> <p>9 transcript, my name is Heather Milligan from</p> <p>10 Paul Weiss on behalf of Google. And I will be</p> <p>11 asking the rest of the questions for this</p> <p>12 deposition.</p> <p>13 And with me is -- who has joined the</p> <p>14 room is my colleague, Amy Mauser.</p> <p>15 MS. MAUSER: Also from Paul Weiss on</p> <p>16 behalf of Google.</p> <p>17 MS. MILLIGAN: I'm going to mark for</p> <p>18 the record Exhibit 80, CMS-ADS-0001153897</p> <p>19 through 1153923.</p> <p>20 (Deposition Exhibit 80 was marked</p> <p>21 for identification.)</p> <p>22 THE WITNESS: Thank you.</p>

<p style="text-align: right;">Page 74</p> <p>1 BY MS. MILLIGAN:</p> <p>2 Q. All right. Mr. Koepke, does this</p> <p>3 appear to be an invoice inventory for CMS?</p> <p>4 A. It doesn't have a cover page which</p> <p>5 is unique. It should usually be an e-mail</p> <p>6 and/or cover page. That being said, the</p> <p>7 invoices attached do look familiar as something</p> <p>8 that would come from a contractor to CMS.</p> <p>9 Q. All right. I will just represent to</p> <p>10 you that this was produced to us out of CMS's</p> <p>11 central files.</p> <p>12 And could you just looking at the</p> <p>13 first page ending in 897. Do you see where it</p> <p>14 says: "CMS OE November 2020 invoice</p> <p>15 inventory"?</p> <p>16 A. Yes, I do.</p> <p>17 Q. Okay. What does that mean to you?</p> <p>18 A. This is a high-level listing of</p> <p>19 media purchased in November for CMS at CMS's</p> <p>20 direction.</p> <p>21 Q. And OE stands for open enrollment?</p> <p>22 A. Yes, it does --</p>	<p style="text-align: right;">Page 76</p> <p>1 regards to the advertising campaigns between</p> <p>2 2019 and 2023?</p> <p>3 A. Yes.</p> <p>4 Q. All right. So turning to Page 2 of</p> <p>5 3, you see listed here a series of descriptions</p> <p>6 of invoiced amounts?</p> <p>7 A. Yes, I do see that.</p> <p>8 Q. Okay. Which, if any, of these</p> <p>9 are -- were paid for open-web display</p> <p>10 advertising?</p> <p>11 MR. SOSNOWSKY: Objection.</p> <p>12 Foundation.</p> <p>13 THE WITNESS: I see two in</p> <p>14 particular. One is the second line. The other</p> <p>15 is the second line from the bottom.</p> <p>16 BY MS. MILLIGAN:</p> <p>17 Q. Okay. And which -- what purchases</p> <p>18 are represented by the line items you just</p> <p>19 identified?</p> <p>20 MR. SOSNOWSKY: Objection. Form.</p> <p>21 THE WITNESS: The second line that</p> <p>22 says 2020 open enrollment display, Hispanic</p>
<p style="text-align: right;">Page 75</p> <p>1 Q. Okay.</p> <p>2 A. -- for Medicare in particular on</p> <p>3 this one.</p> <p>4 Q. Thank you. Okay.</p> <p>5 Could you turn to page ending 3901.</p> <p>6 And do you see that this is pages 1, 2, and 3</p> <p>7 of a Google invoice?</p> <p>8 A. It has an invoice number, and it has</p> <p>9 Google's logo on it.</p> <p>10 Q. Okay. And this was -- do you</p> <p>11 understand that this was produced from CMS's</p> <p>12 files?</p> <p>13 MR. SOSNOWSKY: Objection. Form.</p> <p>14 Foundation.</p> <p>15 THE WITNESS: As you have told me it</p> <p>16 was --</p> <p>17 BY MS. MILLIGAN:</p> <p>18 Q. Okay.</p> <p>19 A. -- then I trust you, Heather.</p> <p>20 Q. In preparation for this deposition,</p> <p>21 did you ask to speak with anybody at CMS</p> <p>22 about -- about payment and invoicing with</p>	<p style="text-align: right;">Page 77</p> <p>1 means that these were display ads run by Google</p> <p>2 in Spanish, and we have a variety of ads that</p> <p>3 they will look on.</p> <p>4 And then the last one, open</p> <p>5 enrollment display retargeting is similar, but</p> <p>6 that it has this retargeting aspect to it --</p> <p>7 BY MS. MILLIGAN:</p> <p>8 Q. Okay.</p> <p>9 A. -- which allows us to remind people</p> <p>10 who have come to Medicare.gov that they may</p> <p>11 want to complete the action they have done</p> <p>12 because there is a time line coming up, a</p> <p>13 deadline.</p> <p>14 Q. And do you -- the last item on this</p> <p>15 invoice, invalid activity, what does that apply</p> <p>16 to, which one of these purchases?</p> <p>17 MR. SOSNOWSKY: Objection. Form.</p> <p>18 THE WITNESS: That applies across</p> <p>19 the purchases. And to the specifics of that</p> <p>20 \$220 across a \$528,000 expenditure, I cannot</p> <p>21 exactly say exactly how that is spread.</p> <p>22 BY MS. MILLIGAN:</p>

<p style="text-align: right;">Page 114</p> <p>1 wrongful instructions to -- with regard to</p> <p>2 answering questions based on the outcome of</p> <p>3 today's hearing before Judge Anderson.</p> <p>4 MR. SOSNOWSKY: Okay. We obviously</p> <p>5 object to that. You've had full cooperation</p> <p>6 from Mr. Koepke, and we do not have further</p> <p>7 questions. We will read and sign. It is our</p> <p>8 position that CMS is done.</p> <p>9 MS. MILLIGAN: Thank you for your</p> <p>10 time today.</p> <p>11 THE WITNESS: Thank you. As I said,</p> <p>12 this was fascinating.</p> <p>13 THE VIDEOGRAPHER: Going off the</p> <p>14 record. The time is 11:44.</p> <p>15 (Whereupon, the proceeding was</p> <p>16 concluded at 11:44 a.m.)</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p style="text-align: right;">Page 116</p> <p>1 Victor Liu Esq</p> <p>2 victor.liu@usdoj.gov</p> <p>3 August 28th, 2023</p> <p>4 RE: United States, Et Al v. Google, LLC</p> <p>5 8/25/2023, Christopher Koepke (#6075382)</p> <p>6 The above-referenced transcript is available for</p> <p>7 review.</p> <p>8 Within the applicable timeframe, the witness should</p> <p>9 read the testimony to verify its accuracy. If there are</p> <p>10 any changes, the witness should note those with the</p> <p>11 reason, on the attached Errata Sheet.</p> <p>12 The witness should sign the Acknowledgment of</p> <p>13 Deponent and Errata and return to the deposing attorney.</p> <p>14 Copies should be sent to all counsel, and to Veritext at</p> <p>15 (erratas-cs@veritext.com).</p> <p>16</p> <p>17 Return completed errata within 30 days from</p> <p>18 receipt of testimony.</p> <p>19 If the witness fails to do so within the time</p> <p>20 allotted, the transcript may be used as if signed.</p> <p>21</p> <p>22 Yours,</p> <p>23 Veritext Legal Solutions</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 115</p> <p>1 CERTIFICATE OF NOTARY PUBLIC</p> <p>2 I, Bonnie L. Russo, the officer before</p> <p>3 whom the foregoing deposition was taken, do</p> <p>4 hereby certify that the witness whose testimony</p> <p>5 appears in the foregoing deposition was duly</p> <p>6 sworn by me; that the testimony of said witness</p> <p>7 was taken by me in shorthand and thereafter</p> <p>8 reduced to computerized transcription under my</p> <p>9 direction; that said deposition is a true</p> <p>10 record of the testimony given by said witness;</p> <p>11 that I am neither counsel for, related to, nor</p> <p>12 employed by any of the parties to the action in</p> <p>13 which this deposition was taken; and further,</p> <p>14 that I am not a relative or employee of any</p> <p>15 attorney or counsel employed by the parties</p> <p>16 hereto, nor financially or otherwise interested</p> <p>17 in the outcome of the action.</p> <p>18</p> <p>19</p> <p>20 </p> <p>21 Notary Public in and for</p> <p>22 the District of Columbia</p> <p>My Commission expires: August 14, 2025</p>	<p style="text-align: right;">Page 117</p> <p>1 United States, Et Al v. Google, LLC</p> <p>2 Christopher Koepke (#6075382)</p> <p>3 E R R A T A S H E E T</p> <p>4 PAGE____ LINE____ CHANGE_____</p> <p>5 _____</p> <p>6 REASON_____</p> <p>7 PAGE____ LINE____ CHANGE_____</p> <p>8 _____</p> <p>9 REASON_____</p> <p>10 PAGE____ LINE____ CHANGE_____</p> <p>11 _____</p> <p>12 REASON_____</p> <p>13 PAGE____ LINE____ CHANGE_____</p> <p>14 _____</p> <p>15 REASON_____</p> <p>16 PAGE____ LINE____ CHANGE_____</p> <p>17 _____</p> <p>18 REASON_____</p> <p>19 PAGE____ LINE____ CHANGE_____</p> <p>20 _____</p> <p>21 REASON_____</p> <p>22 _____</p> <p>23 _____</p> <p>24 Christopher Koepke Date _____</p> <p>25</p>

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1 United States, Et Al v. Google, LLC

2 Christopher Koepke (#6075382)

3 ACKNOWLEDGEMENT OF DEPONENT

4 I, Christopher Koepke, do hereby declare that I

5 have read the foregoing transcript, I have made any

6 corrections, additions, or changes I deemed necessary as

7 noted above to be appended hereto, and that the same is

8 a true, correct and complete transcript of the testimony

9 given by me.

10

11 _____

12 Christopher Koepke Date

13 *If notary is required

14 SUBSCRIBED AND SWORN TO BEFORE ME THIS

15 _____ DAY OF _____, 20____.

16

17

18

19 _____

20 NOTARY PUBLIC

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